

UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT

Nicholas Lamoureux,

Plaintiff,

v.

Civil Action No. 2:18-cv-176

Commissioner of Social Security,

Defendant.

**ORDER**  
(Doc. 23)

Upon consideration of Plaintiff's Motion for Attorney Fees (Doc. 23), the Commissioner's Response to the Motion (Doc. 24), and Plaintiff's Reply to the Response (Doc. 25), the Court finds that the Motion was timely filed on October 7, 2020, given both Plaintiff's counsel's *actual* receipt of the Notice of Award on September 25, 2020 and the *presumptive* receipt of the Notice on September 24, 2020. (*See* Doc. 23 at 3, Doc. 23-2 at 1, Doc. 25 at 1.) *See Sinkler v. Berryhill*, 932 F.3d 83, 89 (2d Cir. 2019) (holding that motions for attorney fees under § 406(b) are "subject to the fourteen-day filing limitation of Rule 54(d)(2)(B) [of the Federal Rules of Civil Procedure] once a party receives notice of a benefits calculation following a sentence four remand judgment"); *id.* at 88 ("Once *counsel* receives notice of the benefits award[,] . . . there is no sound reason not to apply Rule 54(2)(B)'s fourteen-day limitations period to a § 406(b) filing." (emphasis added)); *id.* at 89 n.5 ("Nothing in this opinion departs from the law's presumption that a

party receives communications *three* days after mailing.” (emphasis added) (citing *Tiberio v. Allergy Asthma Immunology of Rochester*, 664 F.3d 35, 37 (2d Cir. 2011))); compare 20 C.F.R. § 404.1703; *Viator v. Comm’r of Soc. Sec.*, Case # 15-CV-6658-FPG, 2019 WL 1252964, at \*2 (W.D.N.Y. Mar. 19, 2019) (“It is presumed that a recipient of a mailed communication from the [Social Security Administration] received it within *five* days of the date on the notice.” (emphasis added)). Upon reviewing the Motion and its attachments, the Court also finds that the requested fee amount of \$14,172—which is not greater than 25% of Plaintiff’s past due benefits—is reasonable, representative of the results achieved, and does not amount to a windfall. See *Gisbrecht v. Barnhart*, 535 U.S. 789, 807 (2002); *Wells v. Sullivan*, 907 F.2d 367, 372 (2d Cir. 1990).

Accordingly, it is hereby ORDERED that the parties shall confer and submit for the Court’s consideration a proposed order granting Plaintiff’s Motion for Attorney Fees (Doc. 23) and awarding fees to Plaintiff’s attorney in the amount of \$14,172 pursuant to 42 U.S.C. § 406(b).

Dated at Burlington, in the District of Vermont, this 29th day of October 2020.

/s/ John M. Conroy  
 John M. Conroy  
 United States Magistrate Judge